

<sup>1</sup> The Order shows a "Date of Order: June 13, 2002" and "Date of Hearing: June 14, 2002." But these dates are obviously reversed as the Preliminary Hearing transcript is dated June 13, 2002.

**FINDINGS OF FACT**

1. Claimant began his employment as a machinist with respondent in June 2001.
2. Claimant testified that he tripped and fell at work on March 18, 2002, injuring his knee, hip and back.<sup>2</sup> Claimant described the accident as causing him to do the splits with his left leg underneath him and his right leg pointing out. Claimant further testified that he told his supervisor, Dwight Dean, about his fall, that same day, but acknowledges that he never asked to see a doctor. He was able to continue working and complete his shift that day and every day thereafter until he was terminated on April 23, 2002.
3. A co-worker, Rodney Angle, also testified.<sup>3</sup> He specifically recalled an incident where claimant tripped and fell on March 18, 2002, but said claimant caught himself and never fell to the ground and his legs never made contact with the ground. He also recalled seeing claimant speaking with his supervisor, Dwight Dean, afterwards. He overheard part of their conversation and said it had to do with claimant tripping over the pallet. Mr. Dean testified and denied having any knowledge of claimant's alleged accidental injury until sometime after claimant was terminated.
4. Claimant sought medical treatment on his own from Joseph M. Sack, M.D., on April 11, 2002. The medical records in evidence, however, do not contain any mention of a work-related injury. In fact, claimant had been treating with Dr. Sack for years for right knee, hip and back pain, most recently on February 11, 2002, at which time Dr. Sack had recommended claimant see an orthopedic specialist for his chronic condition. Claimant had an appointment to see an orthopedic specialist, Dr. Buhr, on March 13, 2002, but claimant failed to keep that appointment.

**CONCLUSIONS OF LAW**

1. For an injury to be compensable, a claimant must prove that the injury was caused by an accident which arose out of and occurred in the course of employment.<sup>4</sup> An injury is also compensable under the Workers Compensation Act even where the accident only

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<sup>2</sup> The Form K-WC E-1 alleges an accident "on or about 3/15/02 and each day worked thereafter." But at the Preliminary Hearing, after testifying to "a couple of instances where I have fallen," and pain from prolonged standing, claimant focuses on a specific accident that he alleges occurred on March 18, 2002. P.H. Trans. at 7 and 10.

<sup>3</sup> The Preliminary Hearing transcript also spells his name as Ankle.

<sup>4</sup> K.S.A. 44-501(a).

serves to aggravate a preexisting condition.<sup>5</sup> In such cases, the test is not whether the accident caused the condition, but whether the accident aggravated or accelerated a preexisting condition.<sup>6</sup>

2. Workers have the burden of proof to establish their rights to compensation and to prove the various conditions upon which those rights depend.<sup>7</sup>

3. “Burden of proof” means the burden to persuade by a preponderance of the credible evidence that a party’s position on an issue is more probably true than not when considering the whole record.<sup>8</sup>

4. Claimant has proven that he tripped at work on March 18, 2002, but because claimant has not proven that he injured himself as a result of that accident or was otherwise injured while working for respondent, the request for preliminary hearing benefits was properly denied.

5. In addition, claimant has proven that he gave respondent timely notice of his March 18, 2002 accident.

6. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.<sup>9</sup>

**WHEREFORE**, the Appeals Board affirms the June 14, 2002 preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

**IT IS SO ORDERED.**

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<sup>5</sup> *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971); *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 11 P.3d 1184, *rev. denied* \_\_\_\_ Kan. \_\_\_\_ (2001).

<sup>6</sup> *Woodward v. Beech Aircraft Corp.*, 24 Kan App. 2d 510, 949 P.2d 1149 (1997).

<sup>7</sup> K.S.A. 44-501(a).

<sup>8</sup> K.S.A. 44-508(g).

<sup>9</sup> K.S.A. 44-534a(a)(2).

Dated this \_\_\_\_\_ day of October 2002.

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BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant  
Roger E. McClellan, Attorney for Respondent and Insurance Carrier  
Administrative Law Judge Jon L. Frobish  
Director, Kansas Division of Workers Compensation